IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 5555 of 1997

For Approval and Signature:

HONOURABLE MR.JUSTICE K.A.PUJ

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?
2	To be referred to the Reporter or not ?
3	Whether their Lordships wish to see the fair copy of the judgment ?
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
5	Whether it is to be circulated to the civil judge ?

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HIMALAYAN INDUSTRIES - Petitioner(s)
Versus
STATE OF GUJARAT & 1 - Respondent(s)

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Appearance :
MR MEHUL S SHAH for Petitioner(s) : 1,MR SURESH M SHAH for Petitioner(s) : 1,
MR KT DAVE, AGP for Respondent(s) : 1 - 2.

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CORAM : HONOURABLE MR.JUSTICE K.A.PUJ

Date : 18/08/2006

ORAL JUDGMENT

1. The petitioner has filed this petition under Article-226 of the Constitution of India praying for quashing and setting aside the order dated 15.10.1995 passed by the Collector, Rajkot, forfeiting the land granted to the petitioner in the year 1982 for breach of Condition No.11 of the grant order. The petitioner has also challenged the order dated 30.5.1997 passed by the revisional authority i.e. Secretary (Appeals) confirming the order of Collector.

2. The brief facts of the case are that in view of the Government policy to encourage export oriented industries, the petitioner has been granted land of Survey No.52 Paiki of Bhojpara village at Gondal taluka,

admeasuring 16,000 Sq.Mtrs., for carrying on its business of dehydration and storage of fruits and vegetables, by an order dated 13.12.1982 passed by the Collector, Rajkot. The Collector has fixed the price of Rs.24,000/- i.e the amount of premium to be paid in consideration of the said grant of land to the petitioner. The petitioner has paid the said amount of premium on 16.12.1982.

3. The petitioner thereafter paid necessary measurement fees on 12.1.1983 for measurement of the land. The said measurement of land was carried out by the Land Revenue Department on 24.1.983 and the possession of the land came to be handed over to the petitioner. The petitioner thereafter started taking certain steps in respect of the land and deposited the requisite amount for approach road. The petitioner has also got the levelling of the land and applied

for necessary building permission thereon by preparing and submitting building plan of the land. The petitioner thereafter prepared project report and applied for loan as well as necessary export license. The petitioner has incurred considerable expenses for all these actions. On submission of building plan and other details by the petitioner, Bhojpara Gram Panchayat granted building permission for the land under the provisions of the Gujarat Panchayat Act on 23.2.1983.

4. Subsequent to this, on 9.11.1983 the District Collector, Rajkot passed an order revising the premium amount of grant of land from Rs.24,000/- to Rs.72,000/- and the petitioner was informed vide communication dated 20.12.1984 to pay the balance amount of premium so revised. Being aggrieved by the said order of the District Collector, the petitioner preferred a Revision Application to the respondent No.1, who vide his order

dated 25.4.1988 set aside the revised order of grant and remanded the matter to District Collector, Rajkot for a fresh decision after giving proper opportunity to the petitioner. Though the reference of this order is made in the memo of petition and the petitioner has sought leave of this Court to produce the said order, till this date of hearing, no such order is produced on record.

5. It is the further case of the petitioner that despite the pendency of the above referred Revision Application before the revisional authority, the District Collector, Rajkot has issued show cause notice on 25.2.1988 alleging breach of condition incorporated in para-11 of the order dated 13.12.1982 and pointed out that the petitioner has not taken any steps to get the building plan of the land passed within the prescribed time limit. The petitioner submitted a written reply on 29.2.1988

pointing out the various steps taken by him and further pointing out the pendency of the proceeding in the matter of fixation of premium amount and also produced a copy of the building permission. The District Collector, Rajkot, however, under an undue haste proceeded to decide the matter arising from the show cause notice and without giving sufficient and reasonable opportunity of hearing to the petitioner passed an order on 25.4.1988 forfeiting the land in favour of the Government and ordering to recover the land from the petitioner.

6. It appears from the case papers produced before the Court that the order dated 25.4.1988 passed by the District Collector, Rajkot has not been immediately challenged by the petitioner before the revisional authority. The petitioner might have made a request to the District Collector to hear the matter of revision of premium amount for

granting the land, pursuant to the remand order passed by the revisional authority. The said request of the petitioner appears to have been rejected by the District Collector, Rajkot on 27.9.1995. It is only after the receipt of such refusal letter the petitioner has preferred a Revision Application before the revisional authority on 15.10.1995. It appears that before the revisional authority, the issue regarding limitation might not have been raised and the revisional authority has entertained the said revision on merits and decided it vide order dated 30.5.1997 whereby the order of District Collector was confirmed. It is this order of the revisional authority which is under challenge in the present petition.

7. Mr.Mehul S. Shah, learned advocate appearing for the petitioner has submitted that both the orders under challenge are in violation of principle of natural justice and

they have been passed without application of mind. He has further submitted that the respondent authorities have failed to consider various documents and material produced on record by the petitioner. He has further submitted that the entire proceeding initiated by the respondent No.2 by issuing show cause notice, are premature in as much as the order of grant dated 13.12.1982 incorporating Condition No.11, for whose alleged breach, the show cause notice was issued, itself was not final and the proceedings challenging the revision of the grant order were still pending to the knowledge of the respondent No.2. Mr.Shah has further submitted that the respondent No.2 has proceeded against the petitioner in undue haste and has passed the impugned order dated 13.12.1982 exparte without giving sufficient opportunity of hearing to the petitioner and hence the same deserves to be quashed and set aside. Mr.Shah has further

submitted that the respondent authorities have not taken into consideration the fact that the petitioner has acted promptly as far as possible and has taken steps for measurement of land, for approach road, for preparation of building plans, for obtaining building permission, for making the surface of the land even and suitable for building, for preparing project report, for obtaining loan, for obtaining export license etc, and that consumption of more time was due to the revision of grant order by the respondent No.2 and because of all these circumstances no order of forfeiture of the land could have been validly passed against the petitioner. He has further submitted that when necessary building permission was granted to the petitioner on 23.2.1983, there was no ground for passing the order of forfeiture on the alleged ground of breach of Condition No.11 of the grant order. He has further submitted that the grant order itself contains a

particular provision in the form of Condition No.17 which permits land to be retained by the petitioner by payment of requisite penalty, even if the breach alleged against the order is assumed to be true and on this ground it was obligatory on the part of the respondent to consider the same vis-a-vis the case of the petitioner and in absence of such exercise undertaken by the respondent, the impugned order is required to be quashed and set aside. He has further submitted that the petitioner has incurred considerable expenditure on the land over a period of time and hence the impugned order operates very harshly upon the petitioner. He has further submitted that the Condition No.11 itself is a formal and routine condition found in almost all orders of grant of land by the Government. It is practically impossible to strictly comply with such condition in the case of large scale industries like that of the petitioner and a liberal view is required

to be taken in such matter for the purpose of serving the ultimate purpose and object behind the grant order. Mr.Shah has further submitted that the petitioner was ready and willing to pay the amount of premium so determined by the District Collector as a result of the order passed by the revisional authority and after hearing the petitioner in the matter.

8. Mr.K.T.Dave, learned AGP appearing for the respondent has submitted that the petitioner has failed to pay the difference of the premium amount. He has further submitted that the petitioner has committed the breach of Condition No.11 and for which the land granted to the petitioner was liable to be forfeited. He has further submitted that the order of forfeiture was passed in the year 1988 and it was challenged before the revisional authority in the year 1995 i.e after more than 7 years. The revisional

authority has rightly decided that when the land in question was forfeited there is no question of determining the premium amount. He has, therefore, submitted that there is no question of any interference in the impugned order passed by the respondent authorities, while exercising the writ jurisdiction under Articles 226 and 277 of the Constitution of India.

9. Before considering the rival submissions made before the Court it is necessary to have a close look on the interim orders passed by this Court earlier. The Court has issued notice on 31.7.1997 and directed the parties to maintain status quo with regard to the land involved in the present petition. The Court, thereafter, passed further order on 25.9.1997 recording the statement on behalf of the learned counsel appearing for the petitioner that he wanted to take instructions from his client as to whether

the petitioner was willing to pay the charges to the Government in respect of the land in dispute at the present market rate. The Court has also recorded the submission made by the learned AGP to the effect that he wanted to take instructions from concerned authorities as to whether they were willing to accept the value of the land in question at present market rate and allow the petitioner to continue to occupy the land and to install the industry within a reasonable time, which might be agreed between the parties. The petition was, thereafter, admitted and rule was issued on 18.11.1997. Ad-interim relief granted earlier was directed to be continued till disposal of the petition. By virtue of these interim orders the petitioner was allowed to occupy the land in question. Again on 5.10.2005 this Court has passed an order acceding to the request of adjournment on behalf of the petitioner to seek instruction and make a statement whether

his client has paid the maximum price in terms of interim order dated 25.9.1997 and if not whether it was willing to pay the maximum price prevailing as on that day i.e on 5.10.2005. The petition was, thereafter, fixed for hearing today. Mr.Mehul S. Shah, learned advocate appearing for the petitioner has made a statement before the Court that his client is ready and willing to pay the value of the land in question at the present market rate. Mr.K.T.Dave, learned AGP has, however, submitted that it is not possible for the respondent authorities to agree to such proposal especially when the land in question has already been forfeited by virtue of the breach of condition of grant order and payment of price of the amount at the present market rate would not serve any purpose.

10. In above view of the matter, the Court has to consider now the rival submissions of the parties in light of the earlier interim

orders and the offer reiterated by the petitioner to pay the price of the land in question at the prevailing market rate. The land in question was allotted to the petitioner in the year 1982 fixing the amount of premium at Rs.24,000/- which has already been paid immediately by the petitioner. Substantial expenses has been incurred by the petitioner thereafter on development of the said land. Several formalities, legal as well as procedural, have been undertaken by the petitioner over the period. The premium amount was revised from Rs.24,000/- to Rs.72,000/- by the respondent No.2 in the year 1983 which was challenged in the revision and as per the say of the petitioner the revisional authority has set aside the said order with a direction to decide it afresh after giving necessary reasonable opportunity to the petitioner which has not been done and during the pendency of those proceedings the land in question was already

forfeited. There is substance in the submission made on behalf of the petitioner while challenging the said order of forfeiture before the revisional authority. Though building permission was granted to the petitioner the order of forfeiture was passed. An additional amount of premium was not paid only because the proceedings were pending before the revisional authority. The alleged breach of condition was not so serious which cannot be condoned on any count. The grant order itself makes a provision allowing the grantee to retain the possession on payment of certain penalty amount. Even while passing the order recording forfeiture of land, the respondent has made undue haste and without affording reasonable opportunity to the petitioner the order was passed in the matter. The revisional authority has also not taken into consideration the vital aspect that the issue regarding determination of the premium amount

was still pending. It was not finalised and before that the order of forfeiture was passed. He should have, therefore, interfered in that order and considered the submissions made on behalf of the petitioner on their own merits. Since this has not been done, the order was resulted into miscarriage of justice. The Court is, therefore, of the view that no useful purpose would be served if the possession of land which is retained by the petitioner since 1982 is disturbed and order of forfeiture is confirmed on the grounds which are mentioned therein.

11. The Court is, therefore, of the view that the proposal made by the petitioner to pay the value of the land at the prevailing market rate is just and proper and it would not cause any prejudice to the respondent authority. The Court, therefore, directs the respondent No.2 i.e. Collector, Rajkot to ascertain the market value of the land in

question with the help of the Dy. Town Planning Officer, Rajkot and before adopting such market value, reasonable opportunity of being heard may be given to the petitioner and after considering the submission that may be made by the petitioner in respect of such market price, the same should be adopted by the Collector, Rajkot. It is, however, made clear that on determination of the said market price of the land in question and on payment of such amount being market value of land in question, the grant may be renewed in favour of the petitioner. It is also made clear that the order passed by the District Collector after hearing the petitioner will be final and it is not open for the petitioner to challenge the said order. The amount which has already been paid by the petitioner by way of premium for this land may be deducted from the market value of land so determined by the District Collector and the balance amount will be required to be

paid by the petitioner to the respondent authorities. The respondent No.2 is directed to undertake this whole exercise of determination of market value etc, within a period of 3 months from the date of receipt of writ of this Court or from the date of receipt of certified copy of this order, which every is earlier. The petitioner is directed to pay the balance amount within one month from the date of communication of the order determining the market value of land in question. It goes without saying that if the petitioner fails to pay the market price that may be determined by the collector, the order of forfeiture would automatically be revived.

12. Subject to the aforesaid directions and observations the impugned orders are hereby quashed and set aside for the aforesaid limited purpose and the petition is accordingly disposed of as having been allowed as above. Rule is made absolute to

the aforesaid extent without any order as to costs.

(K. A. PUJ, J.)

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